

ARTICLE XXVIII
AUDIT RIGHTS, DISPUTED AMOUNTS
AND DISPUTE RESOLUTION

28.0 Audit Rights, Disputed Amounts and Dispute Resolution.

28.1 Audit Rights.

28.1.1 Subject to the restrictions set forth in Article XX and except as may be otherwise specifically provided in this Agreement, a Party (“**Auditing Party**”) may audit the other Party’s (“**Audited Party**”) books, records, data and other documents, as provided herein, once each Contract Year for the purpose(s) of: (i) evaluating the accuracy of Audited Party’s billing and invoicing, and (ii) verification of compliance with any provision of this Agreement that affects the accuracy of Auditing Party’s billing and invoicing of the services provided to Audited Party hereunder. The scope of the audit shall be limited to the services provided and purchased by the Parties and the associated charges, books, records, data and other documents relating thereto for the period which is the shorter of: (i) the period subsequent to the last day of the period covered by the Audit which was last performed (or if no audit has been performed, the Effective Date), and (ii) the twenty-four (24) month period immediately preceding the date the Audited Party received notice of such requested audit. Such audit shall begin no fewer than thirty (30) days after Audited Party receives a written notice requesting an audit and shall be completed no later than thirty (30) days after the start of such audit. Such audit shall be conducted either by the Auditing Party’s employees or by an independent auditor acceptable to both Parties; provided, however, if the Audited Party requests that an independent auditor be engaged, the Parties shall select an auditor by the thirtieth (30th) day following Audited Party’s receipt of a written audit notice, and the Audited Party shall pay one-quarter (1/4) of the independent auditor’s fees and expenses. Such audit shall begin on or before the later of: (i) thirtieth (30th) day after Audited Party receives a written notice requesting an audit, or (ii) the fifteenth (15th) day after the Parties have selected an auditor. If an independent auditor is used, Auditing Party shall cause the independent auditor to execute a nondisclosure agreement in a form agreed upon by the Parties. Notwithstanding the foregoing, an Auditing Party may audit Audited Party’s books, records and documents more than once during any Contract Year if the previous audit found: (i) previously uncorrected net variances or errors in invoices in Audited Party’s favor with an aggregate value of at least two percent (2%) of the amounts payable by Auditing Party for audited services provided during the period covered by the audit, or (ii) non-compliance by Auditing Party with any provision of this Agreement affecting Auditing Party’s billing and invoicing of services provided to Audited Party with an aggregate value of at least 5% of the amounts payable by Audited Party for audited services provided during the period covered by the audit.

28.1.2 Each audit shall be conducted on the premises of Audited Party during normal business hours. Audited Party shall cooperate fully in any such audit, providing the auditor reasonable access to any and all appropriate Audited Party employees

and books, records and other documents reasonably necessary to assess the accuracy of Audited Party's bills. If the Audited Party requests an independent auditor, the Auditing Party shall not have access to the data of the Audited Party, but shall rely upon summary results provided by the independent auditor. Audited Party may redact from the books, records and other documents provided to any auditor any confidential Audited Party information that reveals the identity of other Customers of Audited Party. Each Party shall maintain reports, records and data relevant to the billing of any services that are the subject matter of this Agreement for a period of not less than twenty-four (24) months after creation thereof, unless a longer period is required by Applicable Law.

28.1.3 If any audit confirms any undercharge or overcharge, then Audited Party shall: (i) for any overpayment, promptly correct any billing error, including making refund of any overpayment by Auditing Party in the form of a credit on the invoice for the first full billing cycle after the Parties have agreed upon the accuracy of the audit results, and (ii) for any undercharge caused by the actions of or failure to act by the Audited Party, immediately compensate Auditing Party for such undercharge, in each case with interest at the lesser of: (a) one and one-half percent (1½%) per month, and (b) the highest rate of interest that may be charged under Applicable Law, compounded daily, for the number of days from the date on which such undercharge or overcharge originated until the date on which such credit is issued or payment is made and available, as the case may be. Notwithstanding the foregoing, neither Party shall be liable for any Underbilled Charges for which Customer Usage Data was not furnished by the other Party within ten (10) months of the date such usage was incurred.

28.1.4 Audits shall be at Auditing Party's expense, except as provided in **Section 28.1.1**, above, subject to reimbursement by Audited Party in the event that an audit finds, and the Parties subsequently verify, adjustment in the charges or in any invoice paid or payable by Auditing Party hereunder by an amount that is, on an annualized basis, greater than two percent (2%) of the aggregate charges for the audited services during the period covered by the audit.

28.1.5 Any Disputes concerning audit results shall be referred to the Parties' respective responsible personnel for informal resolution. If these individuals cannot resolve the Dispute within thirty (30) days of the referral, either Party may request in writing that an additional audit shall be conducted by an independent auditor acceptable to both Parties, subject to the requirements set out in **Section 28.1.1**. Any additional audit shall be at the requesting Party's expense.

28.2 Billing Disputes.

28.2.1 Billing Disputes Related to Paid Amounts.

28.2.1.1 In order for a Billed Party to dispute all or a portion of amounts it has previously paid, it must:

28.2.1.1.1 within eleven (11) months of AT&T's receipt of the bill* in question, give written notice to the Billing Party of the amounts it disputes ("Disputed Amounts") and include in such written notice the total amount disputed and the specific details and reasons for disputing each item (including, without limitation, and as applicable, the date of the bill in question, CBA/BAN number of the bill, the telephone number, customer code, circuit ID number or trunk number, and the USOC information questioned); and

*For purposes of this **Section 28.2.1.1.1**, a Billed Party may dispute all or portion of backbilled amounts previously paid within twelve (12) months of the date of issuance of the backbill.

28.2.1.1.2 follow the dispute resolution procedures set forth in **Section 28.2.3**.

28.2.1.2 If a Billed Party brings a dispute pursuant to this **Section 28.2**, and any portion of the dispute is resolved, at the conclusion of the applicable dispute resolution process pursuant to **Section 28.2.3** or **Section 28.3**, in favor of the Billed Party, the Billing Party shall, no later than the second bill date after the resolution of the dispute, for that portion of the paid Disputed Amounts resolved in favor of the Billed Party, including credit for interest assessed or applied with respect to such portion of the paid Disputed Amounts, if any, thereon. Such interest shall be computed under **Article XXVII, Section 27.13** as if such portion of the paid Disputed Amount became past due from the Billing Party on the same date the Disputed Amount was paid by the Billed Party.

28.2.2 Billing Disputes Related to Unpaid Disputed Amounts; Escrow Requirements.

28.2.2.1 If any portion of an amount due to a Party (the "Billing Party") under this Agreement is subject to a bona fide dispute between the Parties, the Party billed (the "Billed Party") shall, five (5) business days prior to the applicable due date, advise the Billing Party in writing of the amounts it disputes ("Disputed Amounts") and within ten (10) business days after the applicable due date give the Billed Party written notice of the amount disputed, specific details and reasons for disputing each item (including, without limitation, as applicable, the date of the bill in question, CBA/BAN number of the bill, the telephone number, customer code, circuit ID number or trunk number, the USOC information questioned), and pays to SBC-AMERITECH all undisputed unpaid charges by their applicable due date. The notice shall be identified as arising under this **Section 28.2.2**. All disputes must be in good faith and have a reasonable basis.

28.2.2.2 The Billed Party shall pay: (i) when due, all undisputed amounts to the Billing Party, and (ii) within thirty (30) days after its written notice of dispute, except as otherwise provided in **Section 28.2.2.4** below, place all Disputed Amounts into an interest bearing escrow account with a third party escrow agent

mutually agreed upon by the Parties. To be acceptable, the third party escrow agent must meet all of the following criteria:

28.2.2.2.1 The financial institution proposed as the third party escrow agent must be located within the continental United States;

28.2.2.2.2 The financial institution proposed as the third party escrow agent may not be an affiliate of either Party; and

28.2.2.2.3 The financial institution proposed as the third party escrow agent must be authorized to handle Automatic Clearing House (ACH) credit transactions transfers.

28.2.2.2.4 In addition to the foregoing requirements for the third party escrow agent, the disputing Party and the financial institution proposed as the third party escrow agent must agree that the escrow account will meet all of the following criteria:

28.2.2.2.5 The escrow account must be an interest bearing account;

28.2.2.2.6 All charges associated with opening and maintaining the escrow account will be borne by the disputing Party;

28.2.2.2.7 That none of the funds deposited into the escrow account or the interest earned thereon may be subjected to the financial institution's charges for serving as the third party escrow agent;

28.2.2.2.8 All interest earned on deposits to the escrow account shall be disbursed to the Parties in the same proportion as the principal; and

28.2.2.2.9 Disbursements from the escrow account shall be limited to those:

28.2.2.2.9.1 authorized in writing by both the disputing Party and the Billing Party (that is, signature(s) from representative(s) of the disputing Party only are not sufficient to properly authorize any disbursement); or

28.2.2.2.9.2 made in accordance with the final, non-appealable order or award of an arbitrator appointed pursuant to the provisions of **Section 28.3**; or

28.2.2.2.9.3 made in accordance with the final, non-appealable order of the court that had jurisdiction to enter an arbitrator's award pursuant to **Section 28.3**.

28.2.2.3 Disputed Amounts in escrow shall be subject to interest as set forth in **Section 27.13**.

28.2.2.4 The Billed Party shall not be required to place Disputed Amounts in escrow, as required by **Section 28.2.2.2**, above, if: (i) the Billed Party does not have a proven history of late payments and has established a minimum of twelve (12) consecutive months good credit history with the Billing Party (prior to the date it notifies the Billing Party of its billing dispute), and (ii) the Billed Party has not filed more than three (3) previous billing disputes that were resolved in Billing Party's favor within the twelve (12) months immediately preceding the date it notifies the Billing Party of its current billing dispute.

28.2.2.5 Issues related to Disputed Amounts shall be resolved in accordance with all of the applicable procedures identified in the Informal Billing Dispute Resolution provisions set forth in **Section 28.2.3**.

28.2.2.6 If the Billed Party disputes any charges in accordance with **Section 28.2**, and any portion of the dispute is resolved in favor of such Billed Party, the Parties shall cooperate to ensure that all of the following actions are taken:

28.2.2.6.1 no later than the second bill date after the resolution of the dispute, the Billing Party shall credit the invoice of the Billed Party for that portion of the Disputed Amounts resolved in favor of the Billed Party, including a credit for any interest assessed or applied with respect to such portion of the Disputed Amounts;

28.2.2.6.2 within fifteen (15) calendar days after resolution of the dispute, the portion of the escrowed Disputed Amounts, if any, resolved in favor of the Billed Party shall be released to the Billed Party, together with any accrued interest thereon, and any portion of the Disputed Amounts not in escrow and resolved in favor of the Billed Party shall be paid to Billed Party, together with any interest assessed or applied with respect thereto; and

28.2.2.6.3. within fifteen (15) calendar days after resolution of the dispute, any portion of the escrowed Disputed Amounts resolved in favor of the Billing Party shall be released to the Billing Party, together with any accrued interest thereon (and if the accrued interest does not equal any interest that would have been assessed pursuant to **Section 27.13** had the Disputed Amounts remained undisputed and unpaid during the period of the Dispute, the Billed Party shall remit payment of the difference to the Billing Party within this same time period) and, as applicable, any portion

of the Disputed Amounts not in escrow and resolved in favor of the Billing Party shall be paid to Billing Party, together with any interest assessed or applied with respect thereto.

28.2.3 Informal Billing Dispute Resolution Process.

28.2.3.1 Within five (5) days after delivery of the notices of dispute described in **Section 28.2**, each Party will appoint a knowledgeable, responsible representative to meet and negotiate in good faith to resolve the billing dispute. The location, form, frequency, duration, and conclusion of these discussions will be left to the discretion of the representatives. Upon agreement, the representatives may utilize alternative dispute resolution procedures such as mediation to assist in the negotiations.

28.2.3.2 If the Parties are unable to resolve the dispute through the informal procedures described above in **Section 28.2.3.1**, then either Party may invoke the formal Dispute Resolution Process set forth in **Section 28.3.3** after providing the other at least ten (10) days prior written notice of its intent to do so. Unless the Parties otherwise agree, a Party may give notice of its intent to invoke the procedures of **Section 28.3.3** no earlier than sixty (60) days after the date of the notices of dispute described in **Section 28.2**, initiating informal billing dispute resolution under this Section of the Agreement.

28.3 Dispute Escalation and Resolution.

28.3.1 General.

28.3.1.1 Purpose. This **Section 28.3** is intended to provide for the expeditious resolution of all disputes between SBC-AMERITECH and AT&T arising under this Agreement, and to do so in a manner that permits uninterrupted high quality services to be furnished to each Party's Customers. Notwithstanding the procedures in this **Section 28.3**, in no event shall the parties disrupt service to any AT&T customer or SBC-AMERITECH customer pending the resolution of a dispute. Except as otherwise specifically provided for in this Agreement, no claim may be brought for any dispute arising from this Agreement more than twenty-four (24) months from the date the occurrence which gives rise to the dispute is discovered or reasonably should have been discovered with the exercise of due care and attention. Dispute Resolution shall commence upon one Party's receipt of written notice, which notice shall be identified as being brought pursuant to this section, of a controversy or claim arising out of or relating to this Agreement or its breach. No Party may pursue any claim unless such written notice has first been given to the other Party.

28.3.1.2 Non-Exclusive Remedy.

28.3.1.2.1 Dispute resolution under the procedures provided in this **Section 28.3** shall be the preferred, but not the exclusive, remedy for all disputes between SBC-AMERITECH and AT&T arising out of this Agreement or its breach. Notwithstanding anything to the contrary provided herein, each Party reserves its rights to

resort to the Commission or to a court, agency, or regulatory authority of competent jurisdiction with respect to disputes as to which the Commission or such court, agency, or regulatory authority specifies a particular remedy or procedure. However, except for an action seeking a temporary restraining order or an injunction related to the purposes of this Agreement, or suit to compel compliance with this Dispute Resolution process, no action or complaint may be filed in the Commission or a court, agency or regulatory authority of competent jurisdiction before the Informal Resolution of Disputes procedures set forth in **Section 28.3.2**, below (or with respect to billing disputes, the Informal Billing Dispute Resolution process set forth in **Section 28.2.3**, above) have been followed, in good faith, by the Party commencing such action or complaint.

28.3.1.2.2 Nothing in this **Section 28.3** shall limit the right of either SBC-AMERITECH or AT&T to obtain provisional remedies (including injunctive relief) from a court before, during or after the pendency of any arbitration proceeding (but prior to a decision being rendered) brought pursuant to this **Section 28.3**. However, once a decision is reached by the Arbitrator, such decision shall supersede any provisional remedy. Despite any such action, the Parties will continue to participate in good faith in the dispute resolution procedures described in this **Article XXVIII**.

28.3.2 Informal Dispute Resolution. Except as otherwise provided herein, any dispute, controversy or claim (individually and collectively, a “**Dispute**”) arising under this Agreement shall be resolved in accordance with the procedures set forth in **Section 28.3**. In the event of a Dispute between the Parties relating to this Agreement and upon the written request of either Party, each of the Parties shall appoint a knowledgeable, responsible representative who has authority to settle the Dispute and who is at a higher level of management than the persons with direct responsibility for administration of this Agreement. The designated representatives shall meet as often as they reasonably deem necessary in order to discuss the Dispute and negotiate in good faith in an effort to resolve such Dispute. The specific format for such discussions will be left to the discretion of the designated representatives, however, all reasonable requests for relevant information made by one Party to the other Party shall be honored. Discussions and the correspondence among the representatives for purposes of settlement are exempt from discovery and production and will not be admissible in the arbitration, lawsuit or other proceeding described below without the concurrence of both Parties. Documents identified in or provided with such communications that were not prepared for purposes of the negotiations are not so exempted, and, if otherwise admissible, may be admitted in evidence in an arbitration, lawsuit or other proceeding. If the Parties are unable to resolve issues related to a Dispute within fifteen (15) days after receipt by one Party of notice of a Dispute, (or within sixty (60) days after receipt by one Party of notice of a billing dispute under **Section 28.2**, above) the Parties shall follow the procedures set forth in **Section 28.3.3**, below.

28.3.3 Formal Dispute Resolution. In the event of a Dispute between SBC-AMERITECH and AT&T arising under this Agreement that is not resolved pursuant to **Section 28.3.2**, above (or with respect to billing disputes, pursuant to **Section 28.2.3**, above),

either Party may invoke the formal Dispute Resolution procedures described in this **Section 28.3.3.**

28.3.3.1 Claims Subject to Commercial Arbitration. Claims will be subject to arbitration pursuant to **Section 28.3.3.2** if, and only if, the claim is not settled through informal Dispute Resolution and both Parties agree to arbitration. If both Parties do not agree to arbitration, then either Party may pursue a remedy for the Dispute with the Commission, a court, an agency or regulatory authority of competent jurisdiction.

28.3.3.2 Procedures Governing Commercial Arbitration.

28.3.3.2.1 Selection of Provider of Arbitration Services. Disputes subject to arbitration under the provisions of this Agreement will be submitted to a single arbitrator appointed by a provider of arbitration services to which the Parties agree. If the Parties are unable to agree upon a provider of arbitration services for the arbitration of their first dispute, if any, under this Agreement, then the provider shall be J.A.M.S./Endispute. If the Parties are unable to agree upon a provider of arbitration services for the arbitration of their next dispute, if any, under the Agreement, then the provider of arbitration services for that arbitration shall be the American Arbitration Association. Thereafter, if the Parties are unable to agree to the provider of arbitration services for subsequent disputes that may arise under the Agreement, the provider shall alternate between the American Arbitration Association and J.A.M.S./Endispute. Applicable commercial arbitration rules of the provider selected or determined under this Section shall govern the proceeding before an arbitrator appointed by that provider.

28.3.3.2.2 Qualification of Arbitrator; Timing. Regardless of which provider is used under **Section 28.3.3.2.1**, above, the arbitrator appointed shall be knowledgeable of telecommunications issues. The arbitration hearing will be requested to commence within twenty-five (25) calendar days of the demand for arbitration. The Parties may submit written briefs upon a schedule determined by the arbitrator. The Parties will request that the arbitrator rule on the dispute by issuing a written opinion within fifteen (15) calendar days after the deadline for the filing of the briefs.

28.3.3.2.3 Duties and Powers of the Arbitrator. The Arbitrator shall receive complaints and other permitted pleadings, oversee discovery, administer oaths and subpoena witnesses pursuant to the United States Arbitration Act, hold hearings, issue decisions, and maintain a record of proceedings. The Arbitrator will have no authority to award punitive damages, exemplary damages, Consequential Damages, multiple damages, or any other damages not measured by the prevailing Party's actual damages, and may not, in any event, make any ruling, finding or award that does not conform to the terms and conditions of this Agreement.

28.3.3.2.4 Discovery. There shall be no discovery except of the exchange of documents deemed necessary by the Arbitrator to an understanding

and determination of the dispute. SBC-AMERITECH and AT&T shall attempt, in good faith, to agree on a plan for document discovery. Should they fail to agree, either SBC-AMERITECH or AT&T may request a joint meeting or conference call with the Arbitrator. The Arbitrator shall resolve any disputes between SBC-AMERITECH and AT&T, and such resolution with respect to the need, scope, manner and timing of discovery shall be final and binding.

28.3.3.2.5 Privileges. The Arbitrator shall, in all cases, apply the attorney-client privilege and the work product immunity doctrine.

28.3.3.2.6 Location of Hearing. Each arbitration between AT&T and SBC-AMERITECH will be held in Chicago, Illinois, unless otherwise agreed by the Parties.

28.3.3.2.7 Decision.

28.3.3.2.7.1 The Arbitrator's decision and award shall be in writing and shall state concisely the reasons for the award, including the Arbitrator's findings of fact and conclusions of law.

28.3.3.2.7.2 The Arbitrator's award shall be binding with respect to those rights and liabilities of the Parties under the Agreement addressed in the award, unless the award is reversed, vacated, or modified on appeal by the Commission pursuant to this **Section 28.3.3.2.7** below, or by a court of competent jurisdiction.

28.3.3.2.7.3 Within fifteen (15) days of the decision and award, the Arbitrator's decision must be submitted to the Commission for review. Each Party must also submit its position on the award and statement as to whether the Party agrees to be bound by it or seeks to challenge it.

28.3.3.2.7.4 The Commission will determine whether to review the dispute within fifteen (15) days of the date of receipt of the decision submitted for review. If the Commission does not exercise its jurisdiction within fifteen (15) days of receipt, the Arbitrator's decision and award shall be final and binding on the Parties. Judgment upon the award rendered by the Arbitrator may be entered in any court having jurisdiction thereof. Either Party may apply to the United States District Court for the district in which the hearing occurred for an order enforcing the decision.

28.3.3.2.8 Fees.

28.3.3.2.8.1. The Arbitrator's fees and expenses that are directly related to a particular proceeding arising out of a dispute under the terms and conditions of this Agreement and raised pursuant to the procedures set out in this **Section 28.3** shall be paid by the losing Party. The Arbitrator shall determine which Party is the losing Party for purposes of this provision. In cases where the Arbitrator

determines that neither Party has, in some material respect, completely prevailed or lost in a proceeding, the Arbitrator shall, in his or her discretion, apportion the Arbitrator's fees and expenses to reflect the relative success or failure of each Party. Those Arbitrator fees and expenses not directly related to a particular proceeding shall be shared equally. Arbitrator's fees and expenses under this provision include the Arbitrator's per hour, per diem or per-proceeding fee, as established before the proceeding begins (or as subsequently presented to and agreed to by the Parties), any conference room rental costs and administrative fees billed by the Arbitrator's association, and any properly documented travel or other expenses incurred by the Arbitrator pursuant to his or her employment agreement with the Parties. In no event, shall the Arbitrator's fees and expenses under this provision include fees or costs incurred by the Parties, including, by way of example, attorneys' fees, copying costs, expert fees and expenses, travel expenses, and other such costs.

28.3.3.2.8.2. In an action to enforce a decision of the Arbitrator, the prevailing Party shall be entitled to its reasonable attorneys' fees, expert fees, costs, and expenses without regard to the local rules of the district in which the suit is brought.

28.3.3.2.9 Confidentiality. Except as the Parties otherwise agree, or as the Arbitrator for good cause orders, the arbitration proceedings, including hearings, briefs, orders, pleadings and discovery shall not be deemed confidential and may be disclosed at the discretion of either party, unless it is subject to being safeguarded as proprietary, trade secret or confidential information, in which event the procedures for disclosure of such information shall apply.